

MINNESOTA EQUAL ACCESS NETWORK SERVICES, INC. ("MEANS")

Interest: Rural independent telephone companies, C block bidders

Cost Sharing

- The FCC fails to appreciate negative impact on C Block. Due to head start for A and B Block, those blocks should pay full cost of relocation. (1-3)

Interference Standard and Trigger for Obligations

- The commenter chose the C Block because there is room to "shoot around" microwave and chose technology that reduces co-channel interference and transmits PCS between bursts thus eliminating need for relocation. If the commenter had to pay relocation costs, it simply would not build its system. Cost-sharing should exclude subsequent providers using non-interfering technologies. (3)

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Interest: National association of consumer-owned rural electric generation and transmission of electricity utilities using 2 GHz microwave networks

Cost Sharing

- Supports development of a cost sharing plan in order to avoid an area of potential conflict among PCS licensees. Such a plan will encourage the relocation of entire networks rather than individual links. (4-5)

Use of Formula

- The T_1 variable should be determined on the date of transfer or creation of a reimbursement right in order to protect links that may not be the subject of relocation until much later, such as those in rural areas. (5)

Compensable Costs

- The list of reimbursable costs in the NPRM should be illustrative and not limited. Compensable costs in the formula should not exclude attorney, engineering or other consulting fees deemed to be necessary by the current incumbents. Attorney, engineering and other consulting fees should not be excluded because smaller operations may not have the expertise on staff to help determine these new solutions. Smaller 2 GHz incumbents should not be penalized just because they do not maintain large legal or telecommunications engineering staffs. (5)

Reimbursement Cap

- A cap may not be necessary. Such a cap is not efficient in determining prices for future link relocation because incumbents' systems are different. However, if the FCC finds that a cap is appropriate, then \$250,000 per link plus \$150,000 for towers is reasonable at 1995 prices but an escalation factor based on the CPI index should also be adopted. Premiums paid by PCS licensees for early or quick relocation should probably not be included in compensable costs, but if they are excluded, the need to protect subsequent PCS licensees with a cap recedes because comparable facilities will be determined through negotiation under existing FCC rules. (5)

Reimbursement Rights and Date of Obligation

- Creation of separable reimbursement right for the initial PCS licensee makes sense as long as the current incumbent keeps all rights as discussed in ¶ 44 of the NPRM. (5)

Relocation Rule Modifications

Definition of Good Faith and Comparable Facilities

- Definition of good faith during negotiations is not necessary because mutually agreeable solutions can be derived between the parties at any time during the negotiation period. (6)
- Flexibility in the definition of comparable facilities helps ensure good faith negotiations. The FCC's transition rules give PCS licensees and incumbents the proper incentives to negotiate in good faith. In addition, local, state, and federal laws and regulations govern negotiation between business entities and can be used to ensure that each party negotiating during the mandatory period acts in good faith. (6)
- Supports the FCC proposal to limit recurring costs to a single ten-year license term. However, in order to reduce the administrative burden on PCS licensees, it may be advisable to allow reimbursement for recurring costs on a present value basis using a set interest cost calculated, for example, at nine percent per year. (6)
- There should be no accounting for the incidental benefit of improved technologies in more modern products that incumbents receive in relocated systems. Depreciation schedules should not be applied to the cost of the new equipment and systems. (6)

Twelve-Month Test Period

- Until comparability is determined through tests, and use of a new system or relocation back to the 2 GHz band occurs, all rights under the current license should be retained by the incumbent. (6-7)

Secondary Status in 2005

- Opposes relegating all incumbents in the 2 GHz band to secondary status in April 2005. Incumbents in rural areas will be particularly affected since emerging technologies may not require their spectrum for decades. Many incumbent systems are essential for the safe operation of utilities and should not be changed to secondary status on an arbitrary date. (8)

OMNIPOINT COMMUNICATIONS, INC.

Interest: Block A New York MTA licensee and small business applicant in upcoming PCS Block C auction

Cost Sharing

- Generally supports the Commission's proposed plan for cost sharing because it is fair, predictable, properly allocates the costs of clearing the 2 GHz PCS spectrum, resolves the problem of "free riders," promotes voluntary relocation of microwave systems, defines the appropriate costs of the relocation process, and facilitates expeditious negotiation. (1-3)

Use of Formula

- Supports the PCIA full reimbursement proposal as outlined in the NPRM because it is simple and fair. (4)

Compensable Costs

- The Commission should limit the amount of compensable costs to those costs justified to provide "comparable facilities" to the microwave incumbent. Supports the exclusion of premium payments from compensable costs since they are a cost for the benefit of quick and voluntary relocation enjoyed directly by relocater. (4-5)
- The expenses included in "comparable facilities" should be narrowly tailored to avoid implicit premium payments calculated in the actual costs of the replacement facilities. (5)
- The Commission should clarify that the same "replacement cost" basis applies to reimbursement costs imposed from both mandatory and voluntary relocations. (5-6)
- To avoid excessive compensable costs the Commission should permit the payment of equipment costs only, and exclude consulting fees and additional cash payments. (6)

Sunset Period

- Supports the Commission's suggested sunset for payment obligations to cease 10 years after T₁ date. (3)

Reimbursement Cap

- Supports a cap on reimbursement costs. The cap limits the required reimbursement by subsequent PCS operators for negotiation decisions that only benefit the PCS relocater. (6)
- Reimbursement caps encourage new entrants in the wireless industry because it provides a level of certainty concerning reimbursement expenses. (7)
- A cap will help avoid disputes where the costs are clearly not the cost of "comparable facilities." In turn, this will reduce the overall administrative burden on the clearinghouse and the Commission. (7)

Reimbursement Rights and Date of Obligation

- Starting April, 1995, the date the A and B licensee's relocation period officially commenced, parties should be compensated for past relocation expenses incurred. (3)

Interference Standard and Trigger for Obligations

- Supports Commission's tentative conclusion that reimbursement payments should commence only when the subsequent PCS operator begins a commercial, operational system that would have interfered with the relocated microwave link(s). (3)
- Adjacent channel interference should not affect the full reimbursement provision because such interference is difficult to define thus destroying the simplicity of the co-channel approach. Also, it is unfair to require a PCS operator who relocates a link with alleged adjacent channel interference to pay a majority of the relocation costs when PCS market licensees that have experienced direct, co-channel interference pay less than one-half of the reimbursement costs. (4)

Installment Payments Eligibility/Requirements

- Supports the Commission's tentative decision that qualifying PCS entrepreneurs entitled to designated entity payment plan benefits "should have the same option available to them with respect to payments under the cost-sharing formula," and that ". . . the specific terms of the installment payment mechanism, including the treatment of principal and interest, would be the same as those applicable to the licensee's auction payments. . . ." (8)

- Supports the Commission's tentative conclusion that UTAM should be able to make reimbursement payments on the same terms as a designated entity small business. (8)
- The commenter and any other eligible "entrepreneur" or "small business" PCS pioneer should be entitled to make installment payments. (9)

Other

- Efficiencies can be gained through system-wide relocation rather than link-by-link. (2)

PACIFIC BELL MOBILE SERVICES

Interest: PCS licensee

Cost Sharing

- Generally supports cost sharing plan. (2)

Use of Formula

- In the formula, T_1 should be 60 days from the date that the relocater sends out its PCN. This is a definite date and is also reasonably close to the time a PCS provider would be offering service. Opposes uniform date because it would unfairly penalize a relocater that relocates the link significantly after the uniform date. (2)

Compensable Costs

- Supports proposal to limit reimbursable costs to the categories listed in the NPRM. Opposes allowing reimbursement of premium payments over actual costs. (3)

Sunset Period

- Supports sunset date of April 4, 2005, but the FCC should make clear that any subsequent licensees that are paying their portion of relocation costs on an installment basis must continue the payments until the obligation is satisfied. (4)

Reimbursement Rights and Date of Obligation

- Supports allowing PCS licensees to seek reimbursement for any relocation costs incurred after April 5, 1995. (3-4)
- Supports creation of reimbursement right on the date that the PCS licensee submits a relocation agreement to the clearinghouse. If subsequent PCS licensees fail to meet their cost sharing obligations, the relocater should have the option under Section 207 to file a claim for damages at the FCC or in federal district court. All complaints should be swiftly pressed to discourage attempts by subsequent licensees to avoid their obligations. (4)
- The payment obligations should arise 60 days after the subsequent PCS provider issues its PCN. This date is easy to confirm and will avoid disputes. (6)

Interference Standard and Trigger for Obligations

- Supports use of the most current version of Bulletin 10-F to determine interference. (5)
- Agrees that the cost sharing plan obligations should only be incurred when a subsequent licensee would have caused co-channel interference to the link that was relocated and at least one endpoint of the former link was located within the subsequent licensee's market area. However, the FCC should make clear that all PCS licensees remain obligated not to cause harmful interference (co-channel or adjacent channel) to any microwave incumbent. (5)

Installment Payments Eligibility/Requirements

- Supports allowing entrepreneur licensees the same terms for paying their cost sharing obligations as for paying for their licenses. However, UTAM should not be provided with a reduced rate of interest and should have to pay its obligations at its underlying cost of funds since UTAM is composed of major manufacturers that should have no difficulty finding financing. (5-6)

Private Agreements

- Supports allowing parties to form private cost sharing agreements. The clearinghouse should be notified of any such agreements and the link affected. If the parties to the agreement seek reimbursement from other PCS providers not subject to the agreement, all relevant information must be provided to the clearinghouse. (6)

Relocation Rule Modifications

Definition of Good Faith and Comparable Facilities

- Supports the FCC's proposed definition of good faith negotiations. If a finding is made that an incumbent is not acting in good faith in the mandatory period, the incumbent should immediately be converted to involuntary relocation and declared to be in secondary status without any compensation. (10)
- The FCC's current standard for involuntary relocation does not give incumbents an incentive to negotiate in good faith because even if no agreement is reached, the incumbent is still entitled to a new system. If the parties have failed to reach an agreement after the voluntary and mandatory negotiation periods, they are likely to be in an adversarial relocation in which the incumbent may limit access to its property and interfere with the placement of a new system. (10)

- Supports the FCC's reliance on the factors of communications throughput, system reliability, and operating costs for determining comparability. However, in determining operating costs, recurring costs should be limited to five years since that is the length of a microwave license. (7-8)
- Agrees that if analog equipment is not readily available, comparable facilities would consist of the lowest-cost digital system that satisfied the technical requirements of the guidelines. However, would reserve the right to substitute vendors to achieve the most economical solution. (8)

Compensable Costs in Voluntary/Mandatory Periods

- There should be no recovery of extraneous relocation expenses during the mandatory period, including fees for attorneys and consultants. (8)
- During the voluntary period, comparable facilities should consist of an equivalent system based on the factors the FCC has chosen. However, in the mandatory period, depreciation should be taken into account by allowing incumbents the choice of receiving a cash payment equivalent to the depreciated value of their system based on ten-year straight-line depreciation or the provision of uninstalled equipment consistent of comparable radios, antennas, transmission lines, and a frequency study. For those incumbents that were not approached by a PCS licensee during the voluntary period, they should be given six months from the time they were contacted by a PCS licensee in which to negotiate for a system of equivalent operating characteristics. At the end of six months, the definition of comparable facilities becomes depreciated value or the uninstalled equipment option described above. (8-9)

Public Safety Certification

- Supports FCC proposal to require that public safety incumbents establish that they are entitled to extended negotiation periods. However, in establishing that a majority of its communications involve the safety of life and property the FCC should look at the capacity of the licensee based on the initial channel loading contained in the incumbent's Form 402 application. For example, if the licensee's initial channel loading is for 100 channels, it would only qualify for extended relocation if 51 of those channels carried communications involving the safety of life and property. (11)

Dispute Resolution

- Supports requiring that two independent cost estimates of relocation costs prepared by third parties not associated or otherwise affiliated with either the incumbent licensee or the PCS provider be filed with the FCC by parties that

have not reached an agreement within one year from the commencement of the voluntary period. Costs for the estimates should be shared equally between the relocater and the incumbent. (7)

New Microwave Licensing in PCS Band

- Urges the FCC not to accept any modifications to licenses on a primary basis as some licensees may attempt to make minor adjustments to their systems so that they will be susceptible to interference from a PCS provider and be eligible for relocation. (12)

Twelve-Month Test Period

- Supports FCC's proposal to allow an incumbent to surrender its license as part of a relocation agreement without prejudice to its rights under the relocation rules. Also supports having twelve-month test period begin to run from the time that the microwave licensee commences operations of its new system. (11)
- Returning the incumbent back to an equivalent frequency if a facility is not found to be comparable during the test period is virtually impossible and returning it back to its original frequency is impractical. The PCS licensee should have an obligation to cure the problem. (12)
- Only incumbents whose relocated systems are designed and built by PCS licensees are entitled to the twelve-month test period. An incumbent that accepts a cash payment is responsible for its system. (12)

Secondary Status in 2005

- Recommends that the FCC only accept renewals for primary status until April 4, 1996. After that, all renewals should be on a secondary basis. License terms for microwave incumbents are five years; therefore, all renewals processed prior to that date would allow the incumbents to retain primary status for five years. Incumbents relocated from the DBS band were given only five years and there is no reason to give incumbents in the PCS spectrum additional time. (13)

Other

- Incumbent demands for excessive relocation premiums (detailed in PCIA's comments) have prompted a number of proposals by the FCC and need to be addressed. (7)

PCS PRIMECO, L.P.

Interest: PCS provider

Cost Sharing

Use of Formula

- The sharing mechanism used in the private agreement ("Agreement") signed by the commenter and four other A and B block PCS licensees would simplify the cost sharing plan. The formula relies upon a calculation that amortizes the reimbursement based upon the time that the subsequent carrier enters the market. Thus, latecomers pay less but they do not lose any of the benefit of the relocation cost actually expended. C, D, E, and F band licensees would find it easier to calculate their obligations since no complicated and expensive interference studies would be required. (14)

Compensable Costs

- Recommends use of approach in Agreement. For a complete explanation, see summary of comments of GTE Service Corporation. (14)

Reimbursement Cap

- All costs up to \$250,000 directly related to relocating an incumbent's link will be shared equally among the affected carriers (except for the fees of microwave relocation consultants acting on behalf of the PCS licensees). Costs beyond the \$250,000 will be shared if the party making such payments provides documentation to show that the costs were reasonably necessary and reflect actual costs of relocation. (8-9)

Interference Standard and Trigger for Obligations

- The Proximity Threshold (a rectangular area defined by reference to the removed microwave path) is not a technology-specific method for determining interference and would forestall disputes about the proper standards to be used for determining interference. It is also more predictable than an interference study. For a complete explanation, see Summary of Comments of GTE Service Corporation. (12-13)

Role of Clearinghouse

- Supports limited use of a clearinghouse as a means of coordinating relocations done pursuant to private agreements and those done pursuant to the rules

adopted by the FCC. Believes that the expense and functions of the clearinghouse can be reduced if the FCC adopts some of the features of the Agreement. (11)

Private Agreements

- Supports PCIA's proposal that private agreements take precedence over any obligations among PCS providers who are party to a private agreement as long as all PCS providers are responsible for making all cost sharing payments required by the FCC unless those payments are superseded by a private agreement. (14-15)

Relocation Rule Modifications

Voluntary Negotiation Period

- Because of incumbent abuses of the transition rules, the FCC should reconsider the two-year voluntary negotiation period. (16)

Definition of Good Faith and Comparable Facilities

- Supports the FCC's proposed definition of good faith negotiations. Incumbents who refuse an offer of comparable facilities and who subsequently lose either in arbitration or before the FCC should have their license changed to secondary status ninety days after the unfavorable decision. (17)
- Supports PCIA's recommendation that if the proposed facilities meet or exceed the incumbent's existing facilities then a rebuttable presumption should arise that the facilities in question are comparable for purposes of the FCC's rules. Believes that this approach is consistent with the FCC's comparability touchstones of communications throughput, system reliability, and operating cost. (18)
- Supports the concept that comparable facilities should not encompass the replacement of analog facilities with digital equipment when an acceptable analog solution exists. Also supports the FCC's clarification that the PCS relocater's responsibility for comparable facilities extends only to the links actually suffering interference and not to the incumbent's entire system. (18)

Compensable Costs in Voluntary/Mandatory Periods

- Fees for consultants and attorneys hired by the incumbent without the advance approval of the PCS relocater should not be reimbursed during the mandatory period. (18)

Dispute Resolution

- Supports proposal that parties unable to conclude their negotiations after one year should be required to file two independent cost estimates of a comparable system with the FCC. Costs estimates should be disaggregated by link. (19)

New Microwave Licensing in PCS Band

- Supports limitation on new microwave licensing and urges the FCC to extend it to include secondary operations as well. These operations will sooner or later suffer or cause interference and their relocation to other facilities should be undertaken at the earliest opportunity. (19)

Twelve-Month Test Period

- The test period for ensuring that the new facilities are comparable should be shortened to one month. If an incumbent were to upgrade its system independently of this relocation process, its test period for purposes of system acceptance would typically be less than one month. The twelve-month test period assumes that the replacement systems are not adequately engineered and this is not supported by industry practice or commercial experience. (20)
- The rules should provide that any incumbent who accepts a cash payment from the PCS relocater or who designs its own replacement facilities will not be permitted to return to its previous system even if the new system subsequently proves flawed. This is a fair result since anything else would make deployment of the PCS licensee's system subject to the incumbent's own relocation efforts. (20)
- The incumbent should return its license to the FCC upon cutover of the new system. The FCC should hold the license until the end of the test period and issue a public announcement at its conclusion. (20)
- PCS providers should not be required to hold the spectrum from a relocated path in reserve. Requiring the PCS carrier to hold the spectrum in reserve adds to the delay in the relocation process. The FCC should clarify that if the alternative facilities turn out not to be comparable, the incumbent need not be restored to its original 2 GHz spectrum but rather to comparable facilities provided by some other means. (20)

Other

- A small but significant group of incumbents have brandished the voluntary negotiation period as a sword to hector PCS licensees with extortionate, unreasonable demands. This abuse of the rules is frustrating the announced policy of both Congress and the

FCC to introduce new services and competition into the wireless industry as rapidly as possible. (6)

Attachment 1 -- Private Agreement between five A and B block licensees

Attachment 2 -- Letter from CTIA to the Honorable Larry Pressler

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION ("PCIA")

Interest: International trade association representing the interests of both commercial mobile radio service and private mobile radio service

Cost Sharing

Use of Formula

- Supports use of proposed formula. Depreciation should be calculated based on the date that the PCS relocater acquires its reimbursement rights. If a uniform date is set for all depreciation calculations, then the PCS entity performing the relocation may pay an unreasonably large share of the relocation costs if it relocates the link significantly after the uniform date. (27-28)
- The cost sharing formula should not be applied in cases in which PCS relocators are entitled to 100% reimbursement. Any additional reimbursement payments would be calculated under the cost sharing formula and be made directly to the later market entrant, not to the relocater. (32-33)
- Proposes that when a link is located fully within the relocater's block but with only one endpoint within its geographic market, the relocater should be entitled to reimbursement of 50% of its relocation costs up to the cap if another PCS provider enters the market and would have interfered with or suffered interference from the link. (33-34)

Compensable Costs

- Supports only allowing the sharing of actual relocation costs. (28-29)

Sunset Period

- Supports the FCC's proposal that no new cost sharing obligations should be incurred after April 4, 2005. However, obligations incurred prior to April 4, 2005 would be unaffected. (39)

Reimbursement Cap

- Supports cap of \$250,000 per link and a separate cap of \$150,000 for all towers associated with the link. (29-30)

Reimbursement Rights and Date of Obligation

- Supports use of reimbursement rights. However, these rights should be based on the date of the cutover to the incumbent's new system or its ceasing operations. (34)
- Supports the FCC's conclusion that PCS providers should be permitted to seek reimbursement for any relocation costs incurred after April 5, 1995. (36)

Interference Standard and Trigger for Obligations

- Believes that a PCS provider should be responsible for cost sharing only if it would cause interference to or receive interference from a co-channel microwave link's operations in the PCS provider's licensed frequency bands and service area borders. No cost sharing obligations should be required based on adjacent channel interference. A PCS relocater should be entitled to 100% reimbursement for all out-of-band and/or out-of-service area relocations by those PCS providers who are co-channel with the relocated link and would have caused interference to its operations. (30-32)
- The FCC must designate one standard for the clearinghouse to determine interference. Supports use of the Irregular Terrain Model (ITM), also known as Longley-Rice, for determining propagation loss prediction, in the point-to-point mode. The following is a specific procedure for computing interference objectives which are suitable for determining cost sharing obligations: Analog C/I Objective: Equation (A-9), TIA Bulletin 10-F; Analog Threshold Degradation Objective: Equation (A-16), TIA Bulletin 10-F; Digital Interference Objective: Equation (2.5.5-1), TIA Bulletin 10-F; T/I Ratio: Equations (B-3) & (B-4), TIA Bulletin 10-F. (35-36)
- UTAM's cost sharing obligations would also be based on when it would benefit from a relocation. A trigger mechanism, based on the interference calculations, assumptions, and procedures for the calculations of PCS to microwave interference (and which governs the deployment of unlicensed PCS) will need to be developed. (36)

Installment Payments Eligibility/Requirements

- Entrepreneur licensees should be permitted to pay their cost sharing obligations in installment payments similar to their license payment requirements. Proposes that UTAM's payment plan should be as follows: payments would be spread out over a five year period; payments would be due on a quarterly basis; interest would be applied to UTAM's share of the relocation costs. (38)

Role of Clearinghouse

- Supports use of a clearinghouse to administer the cost sharing plan. The commenter would like to be designated as the clearinghouse. States that it has vast coordination and PCS experience and is well-suited to take on these responsibilities. In addition, has explored the structure, functions, and funding necessary for the clearinghouse and is prepared to assume this role. (40-43)

Dispute Resolution

- If any disputes arise regarding the costs eligible for sharing, payment obligations, or any other aspect of the cost sharing process, the clearinghouse will recommend that the parties utilize alternative dispute resolution procedures. (42)
- PCS licenses should be conditioned on compliance with the cost sharing rules. All PCS providers should be required to participate in the clearinghouse, including filing PCNs. Failure of a PCS provider to comply with the cost sharing rules should result in forfeiture or license termination. The FCC should review any failures to comply with cost sharing obligations as part of any PCS licensing process, such as transfer, assignment, or renewal. (42)

Private Agreements

- Private agreements between PCS providers for the sharing of relocation costs should be permitted as long as the parties cooperate with the clearinghouse in meeting cost sharing obligations with other PCS providers not included in a private agreement. (37-38)

Relocation Rule Modifications

Voluntary Negotiation Period

- Because many incumbents are taking advantage of the transition rules, demanding excessive premiums, and delaying the deployment of PCS, the FCC should reconsider its use of voluntary negotiation periods since these periods only give incumbents the opportunity to take advantage of PCS providers without giving incumbents any additional protection. Instead, the Commission should give all incumbents a one-year mandatory negotiation period to be initiated by notification by the PCS provider that it would like to begin negotiations. Good faith negotiations should be required at all times. (11-15)
- If the FCC maintains the voluntary period, the FCC should clarify that PCS licensees can initiate the voluntary negotiation period with an incumbent operating in adjacent spectrum by sending a letter stating that a PCS licensee

would like to begin relocation negotiations since many of these links need to be relocated before A and B block licensees can begin operations. (23)

Definition of Good Faith and Comparable Facilities

- Supports the FCC's proposed definition of good faith. If an incumbent is found not to be negotiating in good faith, the PCS provider should only be required to tender a cash payment to the incumbent in an amount not to exceed the greater of the independent appraisals and the incumbent's system should be converted to secondary status in ninety days. (16-17)
- Supports the FCC's proposed reliance on technical factors for determining comparability, but believes that throughput for an analog system should be measured by the number of 4 kHz voice channels or the equivalent rather than the number of voice and/or data channels. (18)
- Supports allowing the parties to "trade-off" system parameters in order to provide comparable facilities. (18)
- Reimbursement for increased recurring costs should be limited to a single five-year term rather than the ten-year term suggested in the NPRM since the term of a microwave license is typically five years. (19)
- Supports clarification that PCS providers are not required to replace existing analog with digital equipment when an acceptable analog solution exists. (20)
- Supports clarification that PCS providers are only required to relocate links suffering interference from PCS operations. (21)

Compensable Costs in Voluntary/Mandatory Periods

- Supports limiting comparable facilities to actual relocation costs and not including attorney or consulting fees not authorized by the PCS relocater. (19)

Public Safety Certification

- Supports the FCC's proposal that incumbents be required to document that they are entitled to public safety status. (26)
- Proposes that the FCC narrow the definition of public safety to those incumbents that are eligible in the Police Radio, Fire Radio, or Emergency Medical, or Special Emergency Radio Services, are licensees in one or more of these services, and whose substantially all of the communications carried on their facilities involve safety of life and property. (26-27)

Dispute Resolution

- Supports requiring parties currently in negotiations that have not reached an agreement within one year after the commencement of the voluntary period, if it is maintained, to file with the Commission two independent cost estimates (disaggregated by link). PCIA recommends that this information be placed in the PCS licensee's "file" and the microwave incumbent's "file" at the FCC. (20)
- In the case of disputes concerning the comparability of new facilities during the twelve-month test period, the FCC should provide for independent engineering analyses and arbitration under the same policies applicable to cost disputes that arise during the negotiation process. (25)

New Microwave Licensing in PCS Band

- Supports the FCC's decision no longer to permit primary licensing of microwave stations in the 2 GHz band with the exception of minor modifications which do not increase the costs of relocation for PCS providers. However, the FCC should also limit any additional secondary licensing since these links will suffer and cause interference as PCS systems expand. Any new links should be added at other frequencies. (22)

Twelve-Month Test Period

- Supports the FCC's conclusion that the test period should run from the time the microwave licensee commences operations on its new system. The FCC should hold the authorizations during this period and issue a public announcement when the test period is over as part of the Commission's public notice process. (24)
- The test period should be waivable by contract by incumbents and should not be applicable to incumbents who accept a cash payment for the relocation of their system. Allowing incumbents relocating their own systems to take advantage of the test period makes the PCS licensees' ability to deploy their system dependent on an incumbent's own relocation efforts, something over which the PCS licensee has no control. (24)
- The FCC should clarify that if the alternative facilities to which a microwave licensee is relocated prove not to be comparable during the test period, the licensee need not be restored to its original 2 GHz spectrum, but rather would be entitled to the provision of comparable service by some other appropriate means. This would avoid any requirement to hold the incumbent's 2 GHz spectrum in reserve during that twelve-month period. (25)

Other

- Describes in detail abuses of transition rules by microwave incumbents and effects these abuses will have. (2-7)

Exhibit A -- Letter from Suffolk County Police Department Regarding Relocation

Exhibit B -- Agreement for Consultant Services Between the City of San Diego and Keller and Heckman

Exhibit C -- Relocation Information Materials by UTC and Keller and Heckman

SANTEE COOPER

Interest: South Carolina Public Service Authority

Relocation Rule Modifications

- Opposes any changes in the relocation rules. Supports comments of UTC. (1)

Definition of Good Faith and Comparable Facilities

- Important to retain flexibility to reach agreements involving either cash payments or "turn-key" replacements. (3)

Compensable Costs in Voluntary/Mandatory Periods

- Opposes proposal to deny reimbursement for experts and other consultants retained to handle negotiations. (2)
- No arbitrary limits should be placed on agreements reached during mandatory negotiation process. (2)

SOUTHERN CALIFORNIA GAS COMPANY

Interest: Nation's largest natural gas distribution utility; operates 2 GHz links

Cost Sharing

- Supports cost sharing plan as facilitating the relocation of microwave networks. (3-4)

Compensable Costs

- All reasonable relocation costs should be reimbursable, including legal and engineering fees. (8)

Reimbursement Cap

- Opposes a reimbursement cap on relocation expenses as only serving as a disincentive for PCS providers to effect a comprehensive relocation of microwave incumbents with no countervailing benefit. The existence of the reimbursement obligation provides no incentive to overcompensate incumbents since the relocating licensee will always pay a greater amount of the costs of relocation. For out-of-band/spectrum relocation, does not object to a cap of no less than \$300,000 per link, indexed to the CPI. (4-5)
- If the FCC does adopt a cap, \$300,000 is a more appropriate amount. The FCC should clarify that the increased cap for towers would be \$150,000 per additional tower. (6-7)

Reimbursement Rights and Date of Obligation

- Creation of reimbursement rights is preferable to so-called "interference rights." (10 n.12)

Interference Standard and Trigger for Obligations

- Reimbursement should be required based on both co-channel and adjacent channel interference. (9)

Role of Clearinghouse

- Is concerned that clearinghouse proposal could risk breaches of confidentiality which may be particularly important for agreements in the voluntary negotiation period which may contain premiums. Proposes that only a summary of the costs of provision of comparable facilities should be provided to the clearinghouse. To the extent that it needs back-up information, the

clearinghouse should be required by rule to maintain the confidentiality of the details of the agreements and to release only the amount of reimbursement obligation to subsequent PCS licensees. (11)

Relocation Rule Modifications

Definition of Good Faith and Comparable Facilities

- Does not disagree with the FCC's proposed definition of comparable facilities. However, disagrees with the analysis that would define comparable reliability of the radio link as equal to the overall reliability of the incumbent system and would not require the radio link portion of the system to be built to a higher reliability than that of other components of the system. This is based on a misperception of statistical probability. In almost all cases, the reliability of the system as a whole will always be less than the reliability percentage of the radio link. PCS providers should be required to design the replacement radio link to equal or exceed the reliability percentage of the existing link. (14-15)
- The appropriate method for accounting for recurring increased operating costs is the net present value of those costs rather than ten-years' worth of those increased costs. (18)
- Merely compensating a microwave incumbent for the undepreciated value of equipment rendered obsolete by relocation does not provide that licensee comparable facilities and clearly would subject the licensee to substantial costs in effecting the implementation of comparable facilities. The FCC should reject any suggestion to diminish incumbent protection in this manner. (16)

Compensable Costs in Voluntary/Mandatory Periods

- Consulting and legal fees should be reimbursable. They are not extraneous expenses but are a result of being relocated. At most, a limitation that such expenses are reimbursable only to the extent they are reasonable under the circumstances would be appropriate. (8-9)

Twelve-Month Test Period

- Supports maintaining the twelve-month test period. The only way to fully ensure that comparable facilities have been provided is to allow the operator one full year to test them. (13)

Secondary Status in 2005

- Opposes reclassifying incumbents still in the band in April 2005 to secondary status. This removes their protections from the effects of relocation. The appropriate rule modifications, if any, would require PCS licensees to relocate microwave incumbents by April 4, 2005 or forever forfeit their right to do so.
(13)

Exhibit 1 -- Affidavit Regarding Reliability of Microwave Systems

SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Interest: PCS service provider

Cost Sharing

Use of Formula

- Supports use of formula. Depreciation under the formula should begin on the date the PCS operator acquires its reimbursement rights since this date will already be "registered" with the industry clearinghouse and because in-service dates tend to be volatile and may be affected by numerous factors which should not delay the start of the "depreciation clock." (8)

Interference Standard and Trigger for Obligations

- Because interference will be the basis of cost sharing obligations, it is important that the FCC adopt objective standards for both adjacent and co-channel interference. Although there are problems with the TIA standards, the Commenter supports Bulletin 10-G or a revised version of 10-F for lack of a better standard. (6-7)
- PCS providers should be given the flexibility to demonstrate that interference with a relocated path can be avoided through less expensive means such as the replacement of older or less or quality receivers, antennas or filters in use in the existing path. The FCC should permit PCS providers to demonstrate that less expensive methods of dealing with interference could be used to satisfy a PCS provider's obligation under the relocation rules. (7)

Role of Clearinghouse

- Supports creation of a clearinghouse but feels it should be designated by the industry. Prospective vendors interested in establishing a cost sharing clearinghouse should be solicited by an industry association such as PCIA or CTIA. Concurs with the FCC that potential for confidentiality issues arising with respect to information submitted to the clearinghouse is de minimis at best. (9)

Relocation Rule Modifications

Voluntary Negotiation Period

- Good faith negotiations should be required during the voluntary negotiation period. (2-3)